HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 514 OF 2004

Prashant Chauhan,
S/o Shri Subhash Chauhan,
R/o 313, Basant Vihar, Phase-IInd,
P.S. Basant Vihar, Dehradun. .....Applicant.

Vs.

1. State of Uttaranchal
2. Amit Sharma,
   S/o Shri Ashok Sharma,
   R/o 2/4, Rest Camp East, 1st Tyagi Road,
   Dehradun. .....Opp. Parties.

Hon'ble Rajesh Tandon, J.

Heard Sri R.P. Nautiyal, counsel for the applicant, A.G.A. for the State and Mr. Sandeep Tandon, counsel for the respondent no.2.

2. By the present application filed under Section 482 of the Code of Criminal procedure, the applicant has prayed for quashing the summoning order dated 31.08.2004 passed by the Ist Addl. Civil Judge (Jr. Division)/Judicial Magistrate, Dehradun in Case No. 1572 of 2004 *Amit Sharma Vs. prashant Chauhan* and proceedings of Case No. 1572 of 2004 *Amit Sharma Vs. Prashant Chauhan* under Section 138 of the Negotiable Instruments Act pending in the Court of Ist Additional Civil Judge (Jr. Division)/Judicial Magistrate, Dehradun. Further prayer has been made for staying further proceedings of Case No. 1572 of 2004 Amit Sharma Vs.

Prashant Chauhan under Section 138 of Negotiable Instruments Act pending in the Court of 1st Additional Civil Judge (Jr. Division)/Judicial Magistrate, Dehradun.

3. Briefly stated, on 16.07.2004 at about 3.50 p.m., the opposite party no. 2 got an F.I.R. lodged against the applicant with the allegation that the applicant had invested huge amount of opposite party no. 2 in the Saloon business, but the applicant did not pay any profit to the opposite party no. 2 and in respect of these payment, the applicant had also issued a cheque of sum of Rs. 9,32,990.00 drawn on I.C.I.C.I. Bank, Rajpur Road, Dehradun to the opposite party no. 2, but the same was dishonored by the banker of applicant on the basis of stop payment instructions of applicant.

4. On the basis of the FIR dated 16.07.2004, a case was registered being Case Crime No. 181 of 2004 under Sections 420 and 406 I.P.C. against the applicant at Police Station-Dalanwala, District Dehradun. The applicant has submitted that he was arrested in this case and subsequently, after four days, he was released on bail by the Court and the investigation of the matter is being conducted by the Investigating Officer accordingly.

5. Thereafter, on 18.8.2004, opposite party no. 2 filed a case being Case No. 1322 of 2004 Amit Sharma Vs. Prashant Chauhan under Section 138 of the Negotiable Instruments Act in the Court of Chief Judicial Magistrate.

6. Initially the complaint case was filed before Chief Judicial Magistrate, Dehradun, but the same was

transferred to the Court of 1st Additional Civil Judge (Jr. Division)/Judicial Magistrate, Dehradun and it was renumbered as Case No. 1572 of 2004 Amit Sharma Vs. Prashant Chauhan under Section 138 of the Negotiable Instruments Act and the proceedings of which are going on before the Court.

7. On the basis of the complaint case of opposite party no. 2, Ist Additional Civil Judge (Junior Division)/Judicial Magistrate, Dehradun passed an order on 31.08.2004 summoning the applicant under Section 138 of Negotiable Instruments Act for the date fixed and the opposite party no. 2 was directed to do pairvi for summons and produce the list of witnesses within one week.

8. On 09.11.2004 an application was moved on behalf of applicant under Section 210 of Cr.P.C. in the Court of 1st Additional Civil Judge (Junior Division)/Judicial Magistrate, Dehradun for staying the proceeding under Section 138 of the Negotiable Instruments Act against the applicant and also for calling the report of investigating officer in Case Crime No. 181 of 2004, Police Station-Dalanwala, District- Dehradun.

9. In ***Medchl Chemicals and Pharma (P) Ltd. v. Bilogical E. Ltd. and others (2003) 3 SCC 269,*** the Apex Court has been observed as under:

> *"19. Considering the factual aspect of the matter, we unhesitatingly state, however, that the issue involved in the matter under*

consideration is not a case in which the criminal trial should have been short-circuited. We thus, without expressing any opinion on the merits of the case allow the appeal and set aside the impugned order of the high Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observations as above in this judgment be not taken as an expression of any opinion of ours."

10. Since it is complaint case, therefore, it is relevant to quote following portion of ***Smt. Husna and others v. State of U.P. and others [2006 (56)ACC 659]:***

"7. *The petition is finally disposed of witht eh direction to the petitioners to appear before the Court concerned within 15 days of passing of this order and if they do so, the Court will permit them to file appearance bonds to his satisfaction for their regular appearance in the case."*

11. In view of the aforesaid the applicant is directed to present himself before the Chief Judicial Magistrate and ensure his presence by furnishing personal bonds as well as sureties to the satisfaction of the Magistrate concerned for their regular appearance in the

case. The proceedings of 2010 of the Cr.P.C. as well as 138 of the Negotiable Instruments Act shall go on together.

12. Subject to the observations made above, application under Section 482 Cr.P.C. is dismissed.

(Rajesh Tandon, J.)

13th December, 2006

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